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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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JEFFER, MANGELS, BUTLER & MARMARO, LLP  
1900 AVENUE OF THE STARS, 7TH FLOOR  
LOS ANGELES, CA 90067

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/26/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

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Part of Paper No. 15

***Claim Rejection under 35 U.S.C. 112, 2nd paragraph***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 10 recites the limitation "said preservative" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Objection under 37 CAR 1.75 (c)***

Claim 11 is objected to under 37 CAR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. A composition claim is not further limited by the inclusion of intended use language.

***Claim Rejection under 35 U.S.C. 102(b)***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,7,11,13 are rejected under 35 U.S.C. 102(b) as being anticipated by Zbar et al (US 5509940; 4/23/96). Zbar teaches a composition comprising 40% D-limonene, 18%

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ethoxylated castor oil, and 30% water. Zbar teaches that the composition is made by combining the ingredients of said composition. See column 17 example 10, claims 1,2,14. In a claim to a composition, a statement to the composition's intended use has no patentable significance. In addition in a claim drawn to the preparation of a composition, the simple act of combining and mixing ingredients is a common practice.

***Claim Rejection under 35 U.S.C. 103(a)***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-6,9,10,12,14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zbar et al as applied to claims 1,7,11 and 13 above. (US 5509940; 4/23/96). Zbar teaches all that is recited by claims 2-6,9,12,14-16 except for the composition comprising the instant % amount ranges of ingredients. However, it would have been obvious to one having ordinary skill in the art to determine the optimum amounts of ingredients through routine experimentation. One would have been motivated to do this in order to make the most effective composition. Where the prior art teaches a composition comprising all of the components of the instant composition, only differing in the amounts of ingredients, a showing of unexpected results must be shown for the instant composition demonstrating the criticality of the new ranges.

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6.

***Claim Objection / Allowable Subject Matter***

Claims 17-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the instant method of applying the instant composition to the objects (insects, plant, building) of claims 17-24. Claims 25,26 are allowable. The prior art does not teach or suggest the instant method of applying the elected composition consisting essentially of D-limonene, an emulsifying agent, and a hydrophilic solvent to fire ants.

***Elected Requirement***

The elected composition is not allowable. See art rejection above.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

Primary Examiner **ALTON M. PRYOR**  
**PRIMARY EXAMINER**

3/24/03